



November 22, 2023

VIA EMAIL

The Honorable Tonianne J. Bongiovanni
 U.S. District Court for the District of New Jersey
 Clarkson S. Fisher Building & U.S. Courthouse
 402 East State Street
 Trenton, NJ 08608

Re: *UMG Records, Inc., et al. vs. RCN Telecom Services, LLC, et al.*
 Civil Action No. 3:19-cv-17272-RK-TJB

Dear Judge Bongiovanni:

This firm represents Defendants (collectively, “RCN”) in the above-referenced matter. We write to briefly reply to one issue raised in Plaintiffs’ October 20, 2023 letter (ECF No. 254), concerning the relationship between RCN and JPMorgan/Morgan Stanley.

JPMorgan and Morgan Stanley were previously mistakenly identified as “agents of Stonepeak” during Stonepeak’s acquisition of RCN from TPG. *See* ECF No. 229. Publicly available information confirms that JP Morgan and Morgan Stanley represented RCN (now known as Astound Broadband¹) in that transaction, not Stonepeak. *See, e.g.*, “Stonepeak Announces Agreement to Acquire Astound Broadband from TPG for \$8.1 Billion,” November 1, 2020, <https://press.tpg.com/news-releases/news-release-details/stonepeak-announces-agreement-acquire-astound-broadband-tpg-81> (“J.P. Morgan Securities LLC and Morgan Stanley & Co. LLC are acting as financial advisors to Astound.”).²

Thus, by the Court’s reasoning, communications between RCN and JPMorgan/Morgan Stanley should be protected by the common interest privilege because these parties were on the “same side” of the bargaining table. *See* Order at 5 (citing *10x Genomics, Inc. v. Celsee, Inc.*,

¹ RCN is part of a collective of broadband operators that now operate under the name Astound Broadband.

² *See also:*

<https://www.financierworldwide.com/stonepeak-buys-astound-from-tpg-in-81bn-deal>;
<https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/astound-broadband-to-be-acquired-by-stonepeak-for-8-1b-61062826>;
<https://www.nexttv.com/news/tpg-sells-astound-broadband-to-stonepeak-patriot-media-for-dollar81-billion>; and
<https://www.bloomberg.com/press-releases/2020-11-01/stonepeak-announces-agreement-to-acquire-astound-broadband-from-tpg-for-8-1-billion>.

505 F.3d 334, 338 (D. Del. 2020)). This inadvertent error concerning the relationship between RCN and JPMorgan/Morgan Stanley has no bearing on the Court's holding; however, it does affect the documents that are subject to the Order. Because RCN and JPMorgan/Morgan Stanley were not adverse parties in the transaction, the Court's Order should not apply to communications between them. *See* Order at 5-7.

RCN respectfully requests that the Court enter an order clarifying that RCN is not required to produce these documents.³ RCN believes oral argument would assist the Court in resolving these issues, and RCN can be available for an in-person hearing or teleconference on this matter at the Court's convenience.

Respectfully Submitted,

/s/ Edward F. Behm, Jr.

CC: All counsel of record via ECF

³ RCNPriv2505-2507, 2952, 2990-2991, 3026-3027, 3037, 3042-3043, 3044-3045, 3067-3068. ECF No. 253.